Republic of Latvia

Cabinet

Regulation No. 28

Adopted 10 January 2017

**Regulations Regarding the Procedures for the Lease of a Place for the Provision of Services in the Territory of a Customs Control Point of the State Immovable Property and Standard Provisions of the Lease Contract**

*Issued pursuant to*

*Section 21, Paragraph three of the Customs Law*

**I. General Provisions**

1. The Regulation prescribes:

1.1. the procedures for the lease of a place for the provision of services in the territory of a customs control point of the State immovable property;

1.2. the methodology for determining the lease payment and exceptions thereof, and also the standard provisions to be included in the lease contract.

2. The following terms are used in the Regulation:

2.1. lessor – a possessor or manager of a lease object;

2.2. lease object – a place (in the State immovable property) for the provision of a service in the territory of a customs control point;

2.3. lessee – an applicant for leasehold with whom the lessor enters into a contract regarding leasing of a lease object;

2.4. estimated lease payment – the lease payment of the lease object which is determined in accordance with the methodology referred to in Cabinet Regulation No. 97 of 20 February 2018, Regulations for Lease of the Property of a Public Entity (hereinafter – Cabinet Regulation No. 97) or in accordance with the procedures for the calculation of the lease payment for a vacant land parcel referred to in Cabinet Regulation No. 350 of 19 June 2018, Regulations for Land Lease and Right of Superficies of a Public Entity (hereinafter – Cabinet Regulation No. 350) if the lease object is leased out to a body governed by private law.

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**II. Procedures for Leasing the Lease Object**

3. The decision on transfer of the lease object for leasing shall be taken by the lessor in compliance with Section 21 of the Customs Law.

4. The lessee shall be found out by a written auction (hereinafter – the auction) by taking into account the criteria referred to in this Regulation.

5. The lessor shall establish a commission which organises the auction, takes decisions, and carries out other activities referred to in this Regulation during the process of leasing the lease object (hereinafter – the commission).

6. The commission shall consist of at least three members of the commission. The commission shall be comprised of the representatives of the possessor or manager of the lease object or that of other State or local government authorities. Before the development of the auction regulations, members of the commission shall sign the confirmation that there are no conditions due to which it could be considered that they are interested in the selection or activity of a particular applicant for leasehold.

7. The commission shall develop and approve the auction regulations. The place, time, and deadline for the submission of the application for an auction, the procedures for occurrence of the auction, the place and time for opening financial bids, and also the following requirements for applicants for leasehold shall be indicated in the regulations:

7.1. the applicant for leasehold is registered in the Commercial Register or Taxpayer Register;

7.2. on the day of submitting the application for the auction, the applicant for leasehold has no tax debts or the deadlines for the relevant payments have been extended in accordance with the procedures specified in the laws and regulations governing taxes and fees and the applicant for leasehold performs its debt obligations;

7.3. founders of a commercial company or an official of a commercial company with the right to represent the commercial company, individual merchant or performer of economic activity is not criminally punished for a criminal offence of an economic nature;

7.4. if the lease object is located at the border crossing point – founders of a commercial company or an official of a commercial company with the right to represent the commercial company, individual merchant or performer of economic activity has not been recognised to be guilty, by the ruling which has come into force, of committing a criminal offence which is related to human trafficking, terrorism, spying, illegal movement of persons across the State border, smuggling, narcotic or psychotropic substances, weapons, radioactive substances, giving of bribes, accepting bribes, misappropriation of bribes, intermediation in bribery, unlawful participation in property transactions, trading with influence, unlawful requesting, receiving, and giving of benefits, and also with illegal crossing the State border;

7.5. during the last 12 months prior to the day of submitting the application for the auction, the applicant for leasehold has not been punished repeatedly for administrative offences in the field of trade, provision of services, finances, customs or commercial activities;

7.6. a special permit (licence) for the performance of commercial activities or economic activities has been issued to the applicant for leasehold in the cases laid down in laws and regulations;

7.7. other requirements and criteria for the particular type of commercial activities or economic activities. The requirements specified by the commission shall not cause unjustified restrictions for the competition of applicants for leasehold.

8. The commission shall publish the auction regulations and the following information on the lease object and auction:

8.1. the purpose of leasing the lease object;

8.2. the information characterising the lease object (for example, address, cadastre number or cadastral designation, area);

8.3. the estimated lease payment of the lease object laid down by the commission;

8.4. the time period of leasing;

8.5. other lease conditions if any have been provided for in laws and regulations or they have been determined by the lessor;

8.6. the time period for application of applicants for leasehold which is not less than 15 working days from the day when the auction regulations were published;

8.7. a draft lease contract;

8.8. the place and time for survey of the lease object.

9. The information referred to in Paragraph 8 of this Regulation shall be published on the websites of *valsts akciju sabiedrība “Valsts nekustamie īpašumi”* [State joint-stock company State Real Estate] and the State Revenue Service. If there are no restrictions for public access to premises due to objective reasons, the information referred to in Paragraph 8 of this Regulation (except for the draft lease contract) shall be placed in a place available to the public in the premises of the customs control point, specifying the place and time when it is possible to get acquainted with the draft lease contract. The lessor may additionally use also other ways for notifying information so that the information would reach as wide range of applicants for leasehold as possible.

10. Only such lease object may be leased on which the information has been published in conformity with the procedures referred to in this Regulation, except for the case when an existing lease contract is extended:

10.1. taking into account the public interests and usefulness considerations, the lessor has the right to decide whether to extend the existing lease contract (without organising an auction) or to lease the lease object to another lessee in accordance with the procedures specified in this Regulation;

10.2. when extending the lease contract, the condition that the total time period of the lease contract may not exceed half of the time period of the lease contract laid down in the law On Prevention of Squandering of the Financial Resources and Property of a Public Entity shall be complied with, and a lease payment shall be reviewed at least once every six years;

10.3. when extending the lease contract, the lessor shall, not later than within two working days after extension of the lease contract, ensure publication of the relevant information on the websites of the institutions referred to in Paragraph 9 of this Regulation.

11. The lessor has the right not to extend a lease contract with the lessee who has not performed the obligations of the lessee in good faith which are laid down in the relevant contract or in another contract entered into with the lessor, including it has outstanding debt obligations against the lessor or the lessor has information on the payment debts of the services necessary for the maintenance of the immovable property of the public entity.

12. Any person has the right to get acquainted with the information on the status of the lease object as well as to receive other information at the disposal of the lessor and to get acquainted with the lease object on site.

13. In order to apply for the auction referred to in Paragraph 4 of this Regulation, the applicant for leasehold shall:

13.1. pay a security deposit in the bank account specified in the auction regulations in double amount of the published monthly estimated lease payment of the lease object;

13.2. submit the application for participation in an auction to the lessor. The following shall be indicated in the application:

13.2.1. the name (firm), legal address of the merchant, a unified registration number of a merchant and taxpayer or given name, surname, declared address, and taxpayer’s registration code of a performer of economic activity;

13.2.2. the series and number of the special permit (licence) if a special permit (licence) is required for commercial activities or economic activities in accordance with laws and regulations;

13.2.3. the information on resources at the disposal of the applicant for leasehold and experience thereof for ensuring the relevant service;

13.2.4. the information on conformity of the applicant for leasehold with the requirements and criteria for a particular type of commercial activity or economic activity specified by the commission;

13.2.5. the information characterising the lease object (for example, address, cadastre number or cadastral designation, area);

13.2.6. other information referred to in the auction regulations.

14. The applicant for leasehold shall append the following to the application for participation in an auction:

14.1. a confirmation of certain sample (Annex 1) and, if communication on the announced auction has occurred with other applicants for leasehold, also information on communication with competitors in relation to the particular auction (Annex 2);

14.2. a financial bid in a closed envelope in which the offered lease payment is specified. The fact that the financial bid is submitted for a written auction, information characterising the lease object, and data identifying the applicant for leasehold shall be indicated on the envelope;

14.3. the document which confirms payment of a security deposit.

15. Applications for participation in an auction shall be registered according to the sequence of receipt thereof by specifying the date and time of receipt and also the applicant for leasehold. The application shall be kept in a closed envelope until the time of opening the applications for auction specified by the commission.

16. Upon request of the commission, the applicant for leasehold shall submit additional documents and data related to its commercial activities or economic activities (for example, employment contracts, authorisations), except for the information which may be obtained by the commission from the public databases.

17. The persons who have submitted the application and documents referred to in Paragraph 14 of this Regulation for participation in the auction within the time period laid down by the commission and who comply with the requirements referred to in the auction regulations shall participate in the auction.

18. The lease object shall not be leased out to the applicant for leasehold if during the last year the lessor has unilaterally terminated the contract entered into with the applicant on use of another property because the obligations laid down in the contract have not been fulfilled, or the court ruling has come into effect in accordance with which the other contract on use of the property entered into with the lessee has been terminated. The lessor has the right to not lease out the lease object to the applicant for leasehold who has not performed the obligations of the lessee in good faith which are laid down in another contract entered into with the lessor, including it has outstanding debt obligations against the lessor or the lessor has information on the payment debts of the services necessary for the maintenance of the immovable property of the public entity.

19. Opening of the financial bid on the date, time, and place specified in the auction regulations shall be organised by the commission.

20. The commission shall, on the date, time, and place specified in the auction regulations, notify the persons present that the acceptance of applications has been ended and the auction has started. After such announcement, applications shall not be accepted anymore neither submitted in person nor sent by post.

21. Opening of financial bids shall be public.

22. After opening of a financial bid, a member of the commission shall name the applicant for leasehold, the date and time of submitting the application for auction as well as the lease payment offered by the applicant for leasehold and all members of the commission shall sign on the financial bid. Minutes shall be taken during the opening of financial bids. Verbal bids are prohibited in the auction.

23. After opening all financial bids, it shall be announced that the auction is completed and also the highest lease payment and the applicant for leasehold shall be named. Announcement of the auction results shall be recorded in minutes.

24. If after opening all financial bids it is discovered that several applicants for leasehold have offered equal highest lease payment, the commission shall perform one of the following operations:

24.1. continue the auction by accepting financial bids in writing from applicants for leasehold who have offered equal highest lease payment if they participate in the opening of the financial bids and organise immediate opening of the financial bids;

24.2. ask the applicants for leasehold who have offered equal highest lease payment to express their financial bid in writing regarding the highest possible lease payment by determining the date, time, place, and procedures for submitting and opening financial bids.

25. If the lease payment offered in the financial bid is lesser than the amount of the estimated lease payment of the lease object published, the commission shall take the decision to exclude the applicant for leasehold from participation in the auction.

26. If no applicant for leasehold has applied within the published time period for the application of applicants for leasehold, the commission shall take the decision to organise a repeated auction in compliance with the procedures for the publication referred to in Paragraph 9 of this Regulation and may reduce the estimated lease payment by taking into account the requirements for the determination of lease payment referred to in Cabinet Regulation No. 97.

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27. The commission shall approve the auction results and, within three working days after approval of the results, ensure the publication of the relevant information on the websites of the institutions referred to in Paragraph 9 of this Regulation by concurrently informing all the participants of the auction of the decision taken.

28. The lessor shall enter into a lease contract with the applicant for leasehold who has offered the highest lease payment. The applicant for leasehold shall, within the time period specified by the lessor which is not shorter than five working days, sign the lease contract or notify in writing of refusal to sign the lease contract. If the applicant for leasehold fails to sign the contract within the abovementioned time period and does not submit the relevant refusal, it shall be considered that the applicant for leasehold has refused from entering into the contract.

29. If the applicant for leasehold who has offered the highest lease payment refuses to sign the lease contract or it is considered that the applicant for leasehold has refused from entering into the lease contract, or the deed on transfer and acceptance of premises is not signed due to the fault of the applicant for leasehold, the paid-in security deposit shall not be refunded to the applicant for leasehold.

30. If the applicant for leasehold who has offered the highest lease payment refuses to enter into the lease contract or it is considered that the applicant for leasehold has refused from entering into the lease contract, the lessor may offer in writing to enter into the lease contract to that applicant for leasehold who has offered the next highest lease payment. The commission shall, within two working days after sending the abovementioned bid, ensure the publication of the relevant information on the websites of the institutions referred to in Paragraph 9 of this Regulation.

31. The information on the lease contract entered into shall be published on the websites of the institutions referred to in Paragraph 9 of this Regulation within two working days after signing the lease contract.

32. In the case referred to in Paragraph 26 of this Regulation, if the lease object is leased out for the reduced estimated lease payment, the time period for the lease contract may not exceed one year.

33. The lessor has the right, during the validity of the lease contract and on the basis of the proposal by the lessee, to review the lease payment if changes have occurred in the segment of the immovable property market. When reviewing the lease payment, the amount thereof shall be determined in conformity with the procedures for the determination of a lease payment referred to in Cabinet Regulation No. 97 or Cabinet Regulation No. 350. If the reviewed lease payment is lower than the lease payment laid down in the lease contract, the reduction may not exceed 20 % of the determined lease payment. The lease payment shall not be reduced during the first year after entering into the lease contract.

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**III. Standard Provisions to be Included in the Lease Contract**

34. The following provisions shall be included in the lease contract:

34.1. the subject matter of the lease contract;

34.2. personal identification data of the lessor and lessee;

34.3. the purpose of use of the lease object;

34.4. the amount of the lease payment and management payment, payment procedures, review procedures, procedures for the payment of additional payments, including the costs for insurance of the lease object, immovable property tax or compensation thereof, costs for the services (for example, ensuring heat energy, electricity, supply of natural gas, water supply and sewerage services, collection of municipal waste) necessary for the maintenance of the immovable property, costs for communication services, and other costs provided for in the lease contract;

34.5. the rights and obligations of the contracting parties;

34.6. the liability of the contracting parties for the failure to perform contract obligations;

34.7. the time period of the lease contract;

34.8. the procedures for settling disputes;

34.9. the conditions for termination of the contract, including unilateral right to withdraw from the lease contract.

35. The provisions of the lease contract entered into shall not differ from the published provisions of the lease contract. The lease payment laid down in the contract may not be less than the auction results (except when the lease payment is changed in the cases referred to in Paragraphs 36 and 38 of this Regulation). Upon agreement by the parties, the published draft lease contract may be changed insignificantly prior to the signing thereof, taking into account the conditions referred to in this Paragraph.

36. It shall be provided for in the lease contract that the lessor has the right, by sending the relevant notification to the lessee in writing, to change the lease payment unilaterally without making amendments to the contract in the following cases:

36.1. if the consumer price index provided by the Central Statistical Bureau in respect of the last day of changes in the lease payment exceeds 10 %. In such case, the increase of the lease payment shall be determined starting from the second year of lease in compliance with the consumer price indexes provided by the Central Statistical Bureau;

36.2. if, in accordance with laws and regulations, the taxes, fees, the object subject to tax or the value thereof is introduced anew or increased. In such case, the amount of additional payments laid down in the lease contract shall be changed starting from the day which is determined in the relevant laws and regulations;

36.3. if laws and regulations provide for another amount of lease payment or procedures for the calculation of lease payment.

37. It shall be provided for in the lease contract that the lessor has the right not to change the lease payment in the cases referred to in Paragraph 36 of this Regulation if the increase in the lease payment per year is less than the costs for preparing and sending a relevant notification.

38. It shall be provided for in the lease contract that the lessor has the right, by sending a relevant notification in writing to the lessee, to unilaterally review and change lease payment without making amendments to the contract by applying the procedures for the determination of the lease payment referred to in Cabinet Regulation No. 97 or Cabinet Regulation No. 350.

[*21 January 2020*]

39. It shall be provided for in the lease contract that the lessee may not transfer the lease object or a part thereof on a sublease.

40. It shall be provided for in the lease contract that the lessor has the right to withdraw from the lease contract unilaterally by informing the lessee in writing within the time period specified in the contract which is not less than two weeks and more than two months, without covering the losses of the lessee related to early termination of the contract and the necessary and useful expenditures which the lessee has made for the lease object if:

40.1. the lease object is being damaged due to the activity of the lessee;

40.2. the lessee fails to pay the lease payment for more than 30 days or does not settle the management services or services necessary for the maintenance of the immovable property (for example, ensuring heat energy, electricity, supply of natural gas, water supply and sewerage services, collection of municipal waste) or for the communication services;

40.3. the lessee delays payment of the immovable property tax or compensation thereof for more than 30 days;

40.4. the lease object or part thereof is transferred into sub-lease;

40.5. the lessee does not fulfil the conditions for use of the lease object;

40.6. the lessee fails to conform to the conditions referred to in Paragraph 7 of this Regulation;

40.7. the lessee is liquidated and removed from the Commercial Register or lessee is removed from the Taxpayer Register of the State Revenue Service as a performer of economic activity;

40.8. the lessee has not commenced provision of the service at the lease object within 30 days after entering into the contract or has suspended provision of the service at the lease object for more than 30 days.

41. If the obligation to perform investments is provided for in the published lease conditions or the performance of investments during the validity of the lease contract is harmonised by the lessor in writing, it shall be provided for in the lease contract that:

41.1. the lessee is entitled to commence construction work after the lessor has ensured technical survey of the structure in accordance with the procedures laid down in laws and regulations, including photo fixing of the structure;

41.2. the lessee has the obligation to determine the guarantee time period of construction work in conformity with the group of the structure and in accordance with the requirements of laws and regulations. The guarantee of construction work shall be in effect also in the case if the lease contract is terminated before the end of the guarantee time period, and in such case the owner of the structure is entitled to apply to the building contractor with the request to rectify the deficiencies or defects established during the guarantee time period. Before commencement of construction work, the lessee has the obligation to submit to the lessor the confirmation signed by the lessee and building contractor on performance of the abovementioned requirements;

41.3. the lessee has the obligation to carry out construction work in accordance with laws and obligations in conformity with the building design developed and harmonised (also with the lessor) in conformity with the procedures laid down in laws and regulations and cost estimate accepted by the lessor by attracting only such building contractor or qualified specialists for the performance of construction work who, in conformity with that laid down in laws and regulations, are entitled to perform the relevant construction work;

41.4. the lessee has the obligation, within one month after completing construction work, to submit the deed to the lessor on putting the structure into service, the cadastral survey file of the structure, executive documentation, including executive scheme, executive designs, deeds on covered operations and deeds on significant constructions, conformity certificates and declarations on used materials, guarantee confirmations and technical passports of the installed devices and mechanisms, instructions for use and maintenance, testing and inspection deeds and minutes of devices, systems, training instructions for service staff and other executive documents. The obligation to submit to the lessor the executive documentation which is at the disposal of the lessee is also in case when the construction work is not fully completed and construction object is not put into service.

42. It shall be provided for in the lease contract that the lessor has the right to withdraw from the lease contract unilaterally by informing the lessee in writing two months in advance, without covering the losses of the lessee related to early termination of the contract, if the lease object is necessary to the lessor for ensuring the performance of the tasks of customs control, border control, the Food and Veterinary Service control or of other State authorities.

43. The lessor shall not compensate to the lessee the investments made thereby in the lease object, except for the following cases:

43.1. if the lessor has unilaterally withdrawn from the contract before expiration thereof because the lease object is necessary for the lessor for the implementation of public functions laid down in laws and regulations and the lessee has fulfilled the obligations of the lease contract in good faith;

43.2. if the lessor has provided for in the published auction regulations the obligation for performance of investments and amount thereof, and the lessee has fulfilled the obligations of the lease contract in good faith.

44. If the lessee has fulfilled the obligations of the lease contract and obligations referred to in Paragraph 41 of this Regulation in good faith, the lessor shall compensate to the lessee the amount of necessary and useful expenses that are determined by a certified appraiser at the time of termination of the lease contract. The amount of the necessary and useful expenses to be compensated shall be determined in accordance with the provisions of the Civil Law by taking into account depreciation of the necessary and useful expenses made during the validity of the lease contract and other conditions by assessing the conformity of the costs for the works carried out with market prices at the time of performance of works, and also by not compensating the expenses which are recovered in another way, for example, included in the tariffs of water management, heat supply paid services.

**IV. Closing Provision**

45. The laws and regulations in force at the time of entering into the relevant lease contract shall be applicable to the permits and lease contracts entered into until the day of coming into force of this Regulation.

Prime Minister Māris Kučinskis

Minister for Finance Dana Reizniece-Ozola

**Annex 1**

Cabinet Regulation No. 28

10 January 2017

[*21 January 2020*]

**Confirmation for a Bid Developed Independently**

|  |  |
| --- | --- |
| Applicant for leasehold |  |
|  | (name, registration number) |
|  | |

(hereinafter – the applicant) by providing complete and true information in relation to a written auction

|  |
| --- |
|  |
| (name) |

(hereinafter – the auction) confirms that:

1. The applicant has become familiar with this confirmation and agrees to the content thereof.

2. The applicant is aware that it may be excluded from participation in the auction if it will be discovered that this confirmation is not complete and true in any way.

3. The applicant has authorised every person whose signature is put on the bid of the applicant to sign this confirmation on behalf of the applicant.

4. The applicant shall inform that (mark as appropriate):

☐ 4.1. it has submitted a bid regardless of competitors1 and without consultations, contracts, agreements or communication of other type with competitors;

☐ 4.2. it has had consultations, contracts, agreements or communication of other type with one or several competitors in relation to such auction, and the applicant shall append complete and true information to such confirmations on communication of the applicant with competitors in relation to the particular auction (Annex 2) by indicating the names of competitors and purpose, nature, and content of such communication.

5. The applicant (except for the case when the applicant has notified of such communication in accordance with Sub-paragraph 4.2 of this confirmation) has not communicated with any competitor in relation to:

5.1. prices;

5.2. methods, factors (circumstances) or formulas for the calculation of prices;

5.3. intention or decision to participate or not to participate in the auction (to submit or not to submit the bid);

5.4. submission of such bid which fails to comply with the requirements of the auction;

5.5. quality, amount, specification, performance, supply or other conditions which are to be solved regardless of competitors, the products or services to which this auction applies.

6. The applicant has not intentionally, directly or indirectly, disclosed and will not disclose the provisions of the bid to any competitor before the date and time of official opening of bids or awarding the contract, or it is specially disclosed in accordance with Sub-paragraph 4.2 of this confirmation.

7. The applicant is aware that the liability is determined in the Competition Law for a prohibited agreement by providing a fine in the amount of up to 10 % of the net turnover of the last financial year of the offender. Exception – if a competent competition authority, upon establishing infringement of competition law, has given to the applicant who has cooperated with it under the leniency programme2 the immunity from a fine or has reduced the fine.

Notes.

1Within the context of this confirmation, the term “competitor” means any natural or legal person who is not the applicant and who:

1) submits a bid for this auction;

2) taking into account its qualification, capacities or experience, and also goods or services offered could submit a bid for this auction.

2The programme within the framework of which the complete immunity from a fine is given to the undertaking which is or has been involved in a cartel in accordance with the procedures referred to in Cabinet Regulation No. 179 of 29 March 2016, Procedures for Determining a Fine for the Infringements Provided for in Section 11, Paragraph One and Section 13 of the Competition Law and Sections 5, 6, 7, and 8 of the Unfair Retail Trade Practices Prohibition Law, because it is the first who voluntarily submits evidence for such infringement to the Competition Council, or reduction of a fine for cooperation with the Competition Council in disclosing the infringement if complete immunity from a fine is not available.

|  |  |  |  |
| --- | --- | --- | --- |
| Date |  |  |  |
|  |  |  | (signature) |

Minister for Finance Dana Reizniece-Ozola

**Annex 2**

Cabinet Regulation No. 28

10 January 2017

**Information on Communication of the Applicant for Leasehold**

|  |
| --- |
|  |
| (name, registration number) |

**with Competitors in Relation to a Written Auction**

|  |
| --- |
|  |
| (name) |

|  |  |  |
| --- | --- | --- |
| No. | The competitor with which there has been communication (name, registration number or personal identity number of a person) | Type, purpose, nature, and content of communication |
|  |  |  |
|  |  |  |

|  |  |  |  |
| --- | --- | --- | --- |
| Date |  |  |  |
|  |  |  | (signature) |

Minister for Finance Dana Reizniece-Ozola